

## BEFORE THE FEDERAL ELECTION COMMISSION

**SENSITIVE**

In the Matter of )

Missouri Democratic State Committee )  
 and Rod Anderson, in his official capacity )  
 as treasurer )

MUR 5611

## GENERAL COUNSEL'S REPORT #2

I. INTRODUCTION

This Office recommends that the Commission find probable cause to believe that the Respondents, the Missouri Democratic State Committee ("MDSC" or the "Committee") and Rod Anderson, in his official capacity as treasurer, violated 2 U.S.C. §§ 434b(a) and 441b(a). We also recommend that the Commission approve the attached Conciliation Agreement

II. DISCUSSION

Based on an audit of the Committee, the Commission previously found reason to believe that the MDSC violated 2 U.S.C. §§ 434(b) and 441b(a) by misstating its financial activity, failing to report its receipt and transfer of excessive contributions, failing to report debt, accepting corporate contributions, and failing to report its receipt and transfer of corporate contributions.<sup>1</sup> The Commission approved a Conciliation Agreement

<sup>1</sup> The Commission also found reason to believe that five entities made corporate contributions in violation of 2 U.S.C. § 441b(a) and that a limited liability company made a corporate contribution and a contribution in excess of the limits provided at 2 U.S.C. § 441a(a)(1)(C). Based on the responses from these six respondents, in a separate report, we will be recommending that the Commission take no further action and close the file with respect to these respondents

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Office mailed Respondents a Brief setting out the legal and factual issues in this matter and recommending that the Commission find probable cause that the Committee violated 2 U.S.C. §§ 434(b) and 441b(a). The Brief is incorporated by reference.

We address that

conciliation issue *infra* at 6. First, however, we turn to the MDSC's substantive arguments.

The MDSC raises two substantive issues in its Response to the General Counsel's Brief:

- (1) that the statute and regulations nowhere expressly require the reporting of contributions that the contributor intended be split between the Committee's federal and non-federal accounts and
- (2) that the Final Audit Report on which the Brief is based includes incorrect figures for the amounts in violation.

Although Respondents refer to the first issue as "the central legal issue in this case," they admit in the same sentence that their argument is more about mitigation -- that is "whether civil penalties can be fairly sought here" -- than the existence of a violation. Response at p. 4. During the 2000 election cycle, the MDSC deposited excessive contributions in its federal account and transferred the excessive portions of the contributions to its non-federal account. It did not report receiving the excessive portion or transferring the excessive portion to its non-federal account. As we explained in our Brief, the Committee's actions violated the most basic reporting provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"), including the requirement to report not merely all contributions, but all receipts, *see* 2 U.S.C. § 434(b)(2), and the requirement to report all disbursements, including specifically all transfers to its non-federal account, *see* 2 U.S.C. § 434(b)(4)(C). Respondents cite the Commission's acknowledgement in Advisory Opinion 2001-17 that the regulations "do not specifically address the reporting of contribution checks where the proceeds are intended to be split between Federal and non-Federal accounts," and assert that they had no notice of how to properly report such receipts until that opinion and the resolution of MUR 4961 (DNC Services Corp.) in 2001 -- a year after the events at issue here. Response at p. 3. But they fail to explain how they had any less notice than the respondents in MUR 4961, who paid a substantial penalty for effectively the same violations. At

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1 any rate, Respondents now indicate, for the first time, that they are willing to amend their reports  
2 to accurately disclose their receipts and transfers.<sup>3</sup>

3 The MDSC also complains that the Final Audit Report overstated the dollar amount of  
4 prohibited corporate contributions. However, the amount in violation as stated in the General  
5 Counsel's Brief is \$69,500, a reduction of \$24,500 from the amount in the Final Audit Report,  
6 and the MDSC does not contest that amount. One of the reductions corrects a mathematical  
7 error in the Final Audit Report regarding the contribution from Tatlow, Gump and Faiella LLC,  
8 which counsel for the MDSC brought to our attention. The others are based on documentation  
9 obtained from other respondents in this matter, not the MDSC; because the MDSC could not  
10 adequately document its claim that the contributions were not corporate, they were properly  
11 characterized in the Final Audit Report as apparent prohibited corporate contributions. Two of  
12 the contributions (for \$5,000 each) that appeared to be prohibited corporate contributions were  
13 actually contributions from individuals.<sup>4</sup> We also learned that the \$10,000 contribution from  
14 Zimmerman Properties, LLC, was a contribution from a non-corporate limited liability company  
15 and that the contributor intended the contribution to be used for non-federal purposes.

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<sup>3</sup> The MDSC's assertion that it has acted in good faith to resolve this matter, in the face of alleged regulatory ambiguity, is diminished by its failure to amend its reports consistent with the Commission's guidance. In the Interim Audit Report and again in the Final Audit Report, the Commission explained that the MDSC should amend its reports to disclose the full amount of receipts deposited in its federal account and the transfer of some of that money to the Committee's non-federal account. It made other amendments in response to the Audit reports, but not these

<sup>4</sup> Specifically, the Committee received a \$5,000 check from the Greene Law Firm, which at the time of the audit was listed as a limited liability company. We learned, however, that at the time the check was written, the firm was a sole proprietorship and we therefore removed this contribution from the list of potentially prohibited contributions. Similarly, we learned that the \$5,000 check that appeared to be from THF Realty, Inc. was actually Michael Staenberg's personal check

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PAGES 5 AND 6 DISCUSS CONCILIATION AND HAVE BEEN DELETED

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12 IV. RECOMMENDATIONS

- 13 1. Find probable cause to believe that Missouri Democratic State Committee and  
14 Rod Anderson, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b)  
15 and 441b(a).  
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17 2. Approve the attached conciliation agreement and an appropriate letter.  
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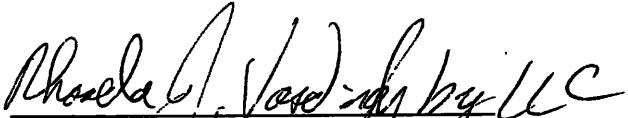
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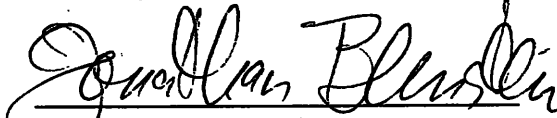
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Lawrence H. Norton  
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Beth N. Mizuno  
Attorney

Attachment:

1. Conciliation Agreement

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